

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

OLASEBIKAN AKINMULERO,

Plaintiff,

v.

DEPARTMENT OF HOMELAND  
SECURITY, *et al.*,

Defendants.

Cause No. C20-1135RSL

ORDER GRANTING  
MOTION FOR  
RECONSIDERATION AND  
DISMISSING CLAIMS

On January 23, 2023, plaintiff's motion for summary judgment was granted in part and the above-captioned matter was remanded to the United States Citizenship and Immigration Services ("USCIS") for further consideration of plaintiff's adjustment of status application. Defendants timely filed a motion for reconsideration (Dkt. # 73),<sup>1</sup> and the Court requested additional briefing (Dkt. # 77).<sup>2</sup> Having reviewed the submissions of the parties, the Court finds as follows:

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<sup>1</sup> Because defendants properly filed their motion for reconsideration under Local Civil Rule 7(h)(2), Federal Rule of Civil Procedure 60 does not pose a bar to the relief requested.

<sup>2</sup> Defendants notified the Court that they had failed to properly serve the motion for reconsideration on plaintiff, and the briefing schedule was reset. Plaintiff's objection to this procedure (Dkt. # 78) is overruled.

1           There is a split in this district regarding whether 8 U.S.C. § 1252(a)(2)(B) precludes  
2 judicial review of the denial of an adjustment of status application made under 8 U.S.C. § 1255  
3 in the circumstances presented here. *See Garcia v. USCIS*, No. 3:22-cv-5984-BJR, Dkt. # 37  
4 (W.D. Wash. Apr. 17, 2023); *Hernandez v. USCIS*, No. 2:22-cv-00904-MJP, Dkt. # 14 (W.D.  
5 Wash. Nov. 30, 2022). As the Honorable Marsha J. Pechman, United States District Judge,  
6 correctly points out, “[n]either the Supreme Court nor the Ninth Circuit has squarely addressed  
7 whether Subparagraph (B) applies outside of removal proceedings.” *Hernandez*, Dkt. # 14 at 9.  
8 However, the situation was discussed by the Supreme Court in *Patel v. Garland*, with the  
9 majority noting that Congress had amended the statute to “expressly extend[] the jurisdictional  
10 bar to judgments made outside of removal proceedings at the same time they preserved review  
11 of legal and constitutional questions made within removal proceedings.” 142 S. Ct. 1614, 1626  
12 (2022). Every Court of Appeals that has considered the issue has concluded that judicial review  
13 of adjustment of status determinations made by USCIS outside of the removal context is barred.  
14 *Abuzeid v. Mayorkas*, 62 F.4th 578 (D.C. Cir. 2023); *Britkovyy v. Mayorkas*, 60 F.4th 1024 (7<sup>th</sup>  
15 Cir. 2023); *Doe v. Sec’y, U.S. Dep’t of Homeland Sec.*, No. 22-11818, 2023 WL 2564856 (11<sup>th</sup>  
16 Cir. Mar. 20, 2023). And the Ninth Circuit has assumed without discussion on at least four  
17 occasions that the jurisdiction-stripping provision of subparagraph (B) applies outside of the  
18 removal context. *See Herrera v. Garland*, No. 21-17052, 2022 WL 17101156 (9<sup>th</sup> Cir. Nov. 22,  
19 2022); *Poursina v. USCIS*, 936 F.3d 868 (9<sup>th</sup> Cir. 2019); *Gebhardt v. Nielsen*, 879 F.3d 980 (9<sup>th</sup>  
20 Cir. 2018); *Hassan v. Chertoff*, 593 F.3d 785 (9<sup>th</sup> Cir. 2010) (per curiam).

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ORDER GRANTING MOTION  
FOR RECONSIDERATION  
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1 This interpretation is supported by the plain language of 8 U.S.C. § 1252(a)(2)(B), which  
2 states:

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4 Notwithstanding any other provision of law (statutory or nonstatutory) . . . , and  
5 except as provided in subparagraph (D), *and regardless of whether the judgment,*  
6 *decision, or action is made in removal proceedings*, no court shall have  
jurisdiction to review—

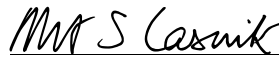
7 (i) any judgment regarding the granting of relief under section . . . 1255 of  
8 this title . . . .

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10 (emphasis added). Section 1255 is the section of the statute under which plaintiff sought  
11 adjustment of status, and “subparagraph (D) preserves review of legal and constitutional  
12 questions only when raised in a petition for review of a final order of removal,” which is not the  
13 situation presented here. *Patel*, 142 S. Ct. at 1626. Giving the ordinary meaning to the statutory  
14 language results in the conclusion that the Court lacks the power to review any aspect of the  
15 agency’s judgment regarding plaintiff’s adjustment of status application unless it falls within  
16 subparagraph (D). Judge Pechman does not suggest an alternative construction of the italicized  
17 language that would allow such review, instead focusing on “the presumption favoring judicial  
18 review of administrative action” and § 1252’s title, “Judicial review of orders of removal.”  
19 *Hernandez*, Dkt. # 14 at 11-12. The Supreme Court expressly rejected the first argument, *Patel*,  
20 142 S. Ct. at 1627, and, while statutory titles and section headings “are tools available for the  
21 resolution of a doubt about the meaning of a statute,” *Porter v. Nussle*, 534 U.S. 516, 528  
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1 (2002), they “cannot substitute for the operative text of the statute,” *Fla. Dep’t of Revenue v.*  
2 *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008).  
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5 For all of the foregoing reasons, the Court finds that it lacks subject matter jurisdiction  
6 over plaintiff’s claims. The motion for reconsideration is GRANTED, and this matter is  
7 DISMISSED.  
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10 Dated this 24th day of April, 2023.  
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13 Robert S. Lasnik  
14 United States District Judge  
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